

ESTTA Tracking number: **ESTTA694006**

Filing date: **09/04/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding.	92059235
Applicant	Plaintiff Nite Ize, Inc.
Other Party	Defendant Zhangwei Mo
Have the parties held their discovery conference as required under Trademark Rules 2.120(a)(1) and (a)(2)?	Yes

Motion for an Extension of Answer or Discovery or Trial Periods With Consent

The Close of Discovery is currently set to close on 09/13/2015. Nite Ize, Inc. requests that such date be extended for 30 days, or until 10/13/2015, and that all subsequent dates be reset accordingly.

Time to Answer :	CLOSED
Deadline for Discovery Conference :	CLOSED
Discovery Opens :	CLOSED
Initial Disclosures Due :	CLOSED
Expert Disclosure Due :	09/13/2015
Discovery Closes :	10/13/2015
Plaintiff's Pretrial Disclosures :	11/27/2015
Plaintiff's 30-day Trial Period Ends :	01/11/2016
Defendant's Pretrial Disclosures :	01/26/2016
Defendant's 30-day Trial Period Ends :	03/11/2016
Plaintiff's Rebuttal Disclosures :	03/26/2016
Plaintiff's 15-day Rebuttal Period Ends :	04/25/2016

The grounds for this request are as follows:

- *Parties are unable to complete discovery/testimony during assigned period*
- *Ordinarily, the Board will grant a consented motion. TBMP Â§ 502.04 (2d ed. 2003). Discovery motions are governed by the Federal Rules of Civil Procedure as modified by the TTAB rules. FirstHealth of the Carolinas Inc. v. CareFirst of Maryland Inc., 81 USPQ2d 1919, 1921 (Fed. Cir. 2007); 37 C.F.R. Â§ 2.120(a)(1). Under the TTAB rules, the discovery period may be extended upon stipulation of the parties approved by the Board. 37 C.F.R. Â§ 2.120(a)(2). Petitioner has conferred with Respondent and Respondent has consented to a 30 day extension of the discovery period. Petitioner requests that the Board grant this consented motion. Petitioner has conferred with Respondent concerning outstanding discovery requests including requests for admissions and interrogatories (including ones originally served in January of 2015) that have not yet been answered. Previously, Respondent indicated that they would strive to provide answers in early September. On August 31, 2015, Petitioner inquired with Respondent concerning the outstanding discovery requests. On September 1, 2015, Respondent's attorney, Mr. Jay Hines, indicated that he had not received any word from Respondent concerning the status of the overdue discovery*

requests. Petitioner inquired as to whether these would be ready next week and expressed doubt that they would be ready in time. Respondent agreed that it was unlikely that these overdue responses would be ready next week (the week of September 7th) and indicated that efforts would be made to return these responses after Respondent's attorney returns from vacation on the week of September 21st. Therefore, this request for an extension of time is not necessitated by the Petitioner's own lack of diligence or unreasonable delay, but instead preserves the chance file an additional request related to the outstanding discovery. (See TBMP Â§ 509.01(a)). Based on the foregoing, Petitioner respectfully requests that the Board extend discovery in this cancellation proceeding and extend all future critical dates by 30 days. This motion is timely filed and the purpose of the requested suspension is not to delay the cancellation process.

Nite Ize, Inc. has secured the express consent of all other parties to this proceeding for the extension and re-setting of dates requested herein.

Nite Ize, Inc. has provided an e-mail address herewith for itself and for the opposing party so that any order on this motion may be issued electronically by the Board.

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by Facsimile or email (by agreement only) on this date.

Respectfully submitted,
/Robert P. Ziemian/
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09/04/2015